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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

### Division of Water Rights

MICHAEL R. STYLER  
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November 9, 2006

D. Heath Clark, PE  
CUWCD Headquarters  
355 West University Parkway  
Orem, UT, 84058

RE: Devils Pass Water Company - Pond Lining Project

Dear Mr. Clark,

In regards to the CUWCD projects, specifically this writing should be entered as a comment to the preliminary recommendations for the Devils Pass Water Company where your office is considering authorization of \$81,250 funds towards a Pond Lining Project, as shown on your FY 2007 Project Funding Recommendations dated October 12, 2006.

As follow up to our conversation by phone, there are 3 regulating reservoir applications providing for a designed total storage capacity of 37 acre feet (AF). Although this total capacity is designed for, the actual maximum amount of water that can be stored is limited by the Devils Pass water rights and priority for flow diverted from the San Pitch River. As regulating reservoirs, these storage ponds, once established are allowed to provide 48 hours of capacity for the amount of flow that can be legally diverted. Therefore these ponds will be limited to a combined storage of not more than 48 hours of flow. I have provided a quick reference below for Devils Pass diversion flow amounts for three flow conditions that occur during the irrigation season:

Flow Condition	Devils Pass WR Diversion from San Pitch River Flow Amount (cfs)	Maximum allowed 48 Hour Total Storage Capacity in Acre Feet $AF = Flow \times 1.983 \times 2 \text{ days}$	Dates
High	3.769	14.94	May & June
Normal	1.280	5.07	Usually March April
Low	0.900	3.56	July, August, Sept, Oct

Based on the existing water rights to flows from the San Pitch River, this absolute maximum storage amount during the high flow condition would be 14.94 AF total capacity, distributed between the three regulating reservoirs. The calculations to support this are based on a high flow right, available during high water, as opposed to a normal flow right, reducing the total capacity to 5 AF, furthermore the low flow condition would reduce the allowed storage capacity to less

than 4 AF. More senior priority rights that already exist lower on the system could preempt any of the Devils Pass flows, and during dry periods may result in no flow at all.

Any amounts contributed by rainfall from the drainage areas above the reservoirs would be considered incidental and are normally included as part of the design capacity of the spillways for each reservoir.

It should also be emphasized that this 48 hours of storage capacity is allowed for irrigation water diverted only during the normal irrigation season and which starts on March 1 and ends on October 15 each year. This is specifically outlined in the corresponding applications. Off-season (December- February inclusive) stock watering rights allow only for flow rights and not for storage except for what is incidentally required to fill small troughs normal for delivery to livestock.

Other than the 48-hour storage accommodations, there are currently no Water Storage rights under the Devils Pass water right. In addition, storage rights on the Upper San Pitch Drainage that could be exchanged as part of a change application process simply do not exist. The Devils Pass Water Company Water Rights are based on the former Sheep Ditch Company rights described in the Cox Decree, these rights do not allow for storage of water. IF all the Sheep Ditch water rights were re-consolidated from the various segregations that have been made over the years, the maximum total flow capacity would amount to 4.5 cfs, which equates to only 17.8 AF storage capacity for 48 hours. During the off irrigation season, these ponds would not be allowed to store water after 48 hours of shutting down irrigation flows to the Devils Pass Ditch.

The 2.5 cfs of stock water as named in the Cox decree is simply a flow right, it does not allow for storage of water. Typically this would occur in the off-season from December to February. However the stock water rights in the Cox decree have since been segregated by various change applications and the existing Devils Pass stock water right is currently 1.575 cfs. To reiterate, there is no storage of stock water allowed.

The approvals provided in the small reservoir application permits: 0065-22-MD, 0065-23-MD and 0065-24-MD are for Irrigation season storage only, this is from April 1-October 15th and they are intended as a regulating reservoir. For reference, the named rights in the small dam applications are 65-2870, a23140; and 65-2871, a23139.

Also be advised that the Devils Pass Water Company is not currently in compliance with their diversion and measuring device works. There is an existing State Engineers Agency Action (SEAA) Number 1168 where they are required to effect needed improvements to their diversion works and comply by April 1, 2007. This requires installation of a gate to prevent bypassing of a weir to allow proper measurement.

If and when the ponds are built and filled with water, they will be subject to a detailed distribution order where the water commissioner will monitor and limit flow amounts and total

capacity stored as generally described above. These ponds will be regulated so the existing water rights are not enlarged upon by adding a permanent storage right to a direct flow right.

If compliance with the distribution order is not honored, downstream users would be adversely affected, which will result in enforcement actions from the Division of Water Rights. These fines range from \$1500 per day (unknowing) to \$5000 per day (knowing) of occurrence.

If you have any questions, feel free to contact Kirk Forbush at (435) 896-4429 or me at (801) 538-7430

Sincerely,

*Mike Silva*

Mike Silva  
Distribution Engineer  
Field Services Section

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Kirk Forbush, P.E. / Regional Engineer  
Larry Rawlings / Water Commissioner, MORONI, UT 84646  
File: SEAA 1168